

111TH CONGRESS
1ST SESSION

H. R. 2858

To amend titles XI and XVIII of the Social Security Act to modernize the quality improvement organization (QIO) program.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 2009

Mr. KIND (for himself, Mr. BURGESS, and Ms. BALDWIN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend titles XI and XVIII of the Social Security Act to modernize the quality improvement organization (QIO) program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medicare Quality Improvement Organization Moderniza-
6 tion Act of 2009”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Quality improvement activities.
- Sec. 3. Improved program administration.
- Sec. 4. Use of evaluation and competition.
- Sec. 5. Quality improvement funding.
- Sec. 6. Qualifications for QIOs.
- Sec. 7. Coordination with Medicaid.
- Sec. 8. Conforming name to “quality improvement organizations”.

1 SEC. 2. QUALITY IMPROVEMENT ACTIVITIES.

2 (a) INCLUSION OF QUALITY IMPROVEMENT FUNC-
3 TIONS.—

4 (1) IN GENERAL.—Section 1154(a) of the So-
5 cial Security Act (42 U.S.C. 1320c–3(a)) is amended
6 by adding at the end the following new paragraph:

7 “(18) The organization shall offer quality im-
8 provement assistance to providers, practitioners,
9 Medicare Advantage organizations offering Medicare
10 Advantage plans under part C of title XVIII, and
11 prescription drug sponsors offering prescription drug
12 plans under part D of such title, including the fol-
13 lowing:

14 “(A) Education on quality improvement
15 initiatives, strategies, and techniques.

16 “(B) Instruction on how to collect, submit,
17 aggregate, and interpret data on measures that
18 may be used for quality improvement, public re-
19 porting, and payment.

20 “(C) Instruction on how to conduct root-
21 cause analyses.

1 “(D) Technical assistance for providers
2 and practitioners in beneficiary education to fa-
3 cilitate patient self-management.

4 “(E) Facilitating cooperation among local
5 stakeholders in quality improvement.

6 “(F) Facilitating adoption of procedures
7 that encourage timely candid feedback from pa-
8 tients and their families concerning perceived
9 problems.

10 “(G) Guidance on redesigning clinical proc-
11 esses, including the adoption and effective use
12 of health information technology, to improve the
13 coordination, effectiveness, efficiency, and safe-
14 ty of care.

15 “(H) Assistance in improving the quality
16 of care delivered in rural and frontier areas and
17 reducing health care disparities among racial
18 and ethnic minorities, as well as gender dispari-
19 ties, including efforts to prevent or address any
20 inconsistencies or delays in the rate of adoption
21 of health information technology and in the ef-
22 fective use of such technology among such enti-
23 ties that treat racial and ethnic minorities or
24 individuals dually eligible for benefits under this

1 title and title XVIII or that furnish such serv-
2 ices in rural areas.

3 “(I) Assistance in improving coordination
4 of care as patients transition between providers
5 and practitioners, including developing the ca-
6 pacity to securely exchange electronic health in-
7 formation and helping providers and practi-
8 tioners to effectively use secure electronic health
9 information to improve quality.

10 “(J) Preparation of confidential reports
11 comparing the performance of primary care
12 physician practices using standardized perform-
13 ance measures and distribution of such reports
14 to primary care practices, subject to the fol-
15 lowing requirements:

16 “(i) The organization shall consult
17 with stakeholders in the State to select
18 clinical topic areas to address in such re-
19 ports.

20 “(ii) Performance measures must
21 have been endorsed by a consensus-based
22 national entity.

23 “(iii) The report given to each pri-
24 mary care practice shall identify that prac-

1 tice, but shall not identify the other prac-
 2 tices in the comparison.

3 “(iv) The organization shall offer as-
 4 sistance to primary care practices in im-
 5 proving performance on the measures.”.

6 (2) PERMITTING DISCLOSURE OF
 7 DEIDENTIFIED INFORMATION.—

8 (A) IN GENERAL.—Section 1160 of such
 9 Act (42 U.S.C. 1320c–9) is amended—

10 (i) in subsection (a)(2), by inserting
 11 “(including the case described in sub-
 12 section (f))” after “in such cases”; and

13 (ii) by adding at the end the following
 14 new subsection:

15 “(f) An organization with a contract under this part
 16 may provide de-identified patient data to providers treat-
 17 ing the same population of patients for the purpose of
 18 measuring and improving the safety, quality, and effec-
 19 tiveness of transitions of such patients from one provider
 20 of services to another. Nothing in this subsection shall be
 21 construed to limit, alter, or affect the requirements im-
 22 posed pursuant to the HIAA privacy regulations (as de-
 23 fined in section 1180(b)(3)).”.

24 (B) PROMULGATION OF REGULATIONS.—

25 Not later than 180 days after the date of the

1 enactment of this Act, the Secretary of Health
2 and Human Services shall promulgate a regula-
3 tion that permits the sharing of data under the
4 amendments made by subparagraph (A).

5 (b) MEDICARE QUALITY ACCOUNTABILITY PRO-
6 GRAM.—Paragraph (14) of section 1154(a) of such Act
7 (42 U.S.C. 1320c–3(a)) is amended to read as follows:

8 “(14)(A) The organization shall conduct a re-
9 view of all complaints about the quality of services
10 (for which payment may otherwise be made under
11 title XVIII) not meeting professionally recognized
12 standards of health care, if the complaint is filed
13 with the organization by an individual entitled to
14 benefits for such services under such title (or a per-
15 son acting on the individual’s behalf). Before the or-
16 ganization concludes that the quality of services does
17 not meet professionally recognized standards of
18 health care, the organization must provide the prac-
19 titioner or person concerned with reasonable notice
20 and opportunity for discussion.

21 “(B) The organization shall establish and oper-
22 ate a Medicare quality accountability program con-
23 sistent with the following:

24 “(i) The organization shall actively educate
25 Medicare beneficiaries of their right to bring

1 quality concerns to Quality Improvement Orga-
2 nizations.

3 “(ii) The organization shall report findings
4 of its investigations to the beneficiary involved
5 or a representative of such beneficiary, regard-
6 less of whether such findings involve a provider,
7 physician or other practitioner, or plan. Such
8 report shall describe whether the organization
9 confirms the allegations in the complaint and
10 any actions taken by the provider, practitioner,
11 or plan, respectively, with respect to such find-
12 ings. Such findings may not be used in any
13 form in a medical malpractice action.

14 “(iii) The organization shall assist pro-
15 viders, practitioners, and plans in adopting best
16 practices for soliciting and welcoming feedback
17 about patient concerns, and assist providers,
18 practitioners, and plans in remedying patient-
19 reported problems that are confirmed by the or-
20 ganization and shall report findings of patient
21 reported problems to the provider, practitioner,
22 or plan involved before disclosing investigation
23 results to the patient or patient’s representa-
24 tive.

1 “(iv) The organization shall determine
2 whether the complaint allegations about clinical
3 quality of care are confirmed and assist pro-
4 viders, practitioners, and plans in remedying
5 confirmed complaints.

6 “(v) The organization shall assist pro-
7 viders, practitioners, and plans in preventing re-
8 currence of quality problems caused by unsafe
9 systems of care, and refer to an appropriate
10 regulatory body providers, practitioners, or
11 plans that are unwilling or unable to improve.

12 “(vi) The organization shall publish annual
13 quality reports in each State in which the orga-
14 nization operates, including aggregate com-
15 plaint data and provider performance on stand-
16 ardized quality measures.

17 “(vii) The organization shall promote bene-
18 ficiary awareness and understanding of stand-
19 ardized quality measures that may be used for
20 evaluating care and for choosing providers,
21 practitioners and plans.

22 “(C) The Secretary shall monitor and report to
23 Congress, regarding—

24 “(i) the reliability of complaint determina-
25 tions by Quality Improvement Organizations;

1 “(ii) the effect of disclosure of complaint
2 findings on the availability of primary- and spe-
3 cialty-care physician reviewers;

4 “(iii) changes resulting from the systems
5 change process described in subparagraph
6 (B)(v); and

7 “(iv) trends in civil litigation filed by Medi-
8 care beneficiaries or their representatives.”.

9 **SEC. 3. IMPROVED PROGRAM ADMINISTRATION.**

10 Part B of title XI of the Social Security Act is
11 amended by adding at the end the following new section:

12 “PROGRAM ADMINISTRATION

13 “SEC. 1164. (a) IMPROVED PROGRAM MANAGE-
14 MENT.—The Secretary shall ensure that Quality Improve-
15 ment Organizations are provided maximum freedom in de-
16 signing and applying intervention strategies for local qual-
17 ity improvement.

18 “(b) ASSURING DATA ACCESS.—The Secretary shall
19 ensure that Quality Improvement Organizations have
20 timely, top priority access to Medicare data for all parts
21 of Medicare pertinent to the contract activities, in a form
22 allowing the data to be integrated and analyzed by such
23 organizations according to the needs of partners and
24 Medicare beneficiaries in each jurisdiction.

25 “(c) SETTING STRATEGIC PRIORITIES.—

1 “(1) APPOINTMENT OF STRATEGIC ADVISORY
2 COMMITTEE.—The Secretary shall appoint an inde-
3 pendent strategic advisory committee (in this sub-
4 section referred to as the ‘committee’), composed of
5 national quality measurement and improvement ex-
6 perts, that includes at least three representatives of
7 organizations holding contracts under this part and
8 at least one appropriately qualified representative of
9 each of the following:

10 “(A) Medicare beneficiaries.

11 “(B) The Agency for Healthcare Research
12 and Quality.

13 “(C) The Federal Employee Health Bene-
14 fits Program.

15 “(D) The Indian Health Service.

16 “(E) The TRACER program.

17 “(F) The Veterans Health Affairs pro-
18 gram.

19 “(G) State Medicaid programs.

20 “(H) Private purchasers.

21 “(I) Health care providers.

22 “(J) Physicians.

23 “(K) Other health care practitioners.

24 “(2) DUTIES OF COMMITTEE.—

1 “(A) IN GENERAL.—The committee shall
2 set national strategic priorities for improvement
3 in the quality of care, consistent with the Insti-
4 tute of Medicine’s six aims for health care im-
5 provement, including safety, effectiveness, pa-
6 tient centeredness, timeliness, efficiency and eq-
7 uity, and update these in time to permit prepa-
8 ration of a draft statement of work and funding
9 request for each program cycle under this part.

10 “(B) SECRETARIAL CONSULTATION WITH
11 COMMITTEE.—Two years before the start of the
12 contract cycle under this part that begins at
13 least 30 months after the date of the enactment
14 of this section, the Secretary shall begin con-
15 sultation with the committee on the design and
16 tasks of the statement of work for such con-
17 tract cycle.

18 “(C) PUBLIC FORUM.—Eighteen months
19 before the beginning of such contract cycle, the
20 committee shall convene a public forum to so-
21 licit and receive stakeholder and public com-
22 ment concerning the design and tasks under the
23 next contract.

24 “(3) INDEPENDENT EVALUATION.—The com-
25 mittee should ensure that the Quality Improvement

1 Organization program is evaluated by an inde-
2 pendent entity using a study design, such as a cross-
3 over design, to allow for an assessment of program
4 performance in a way that does not have an adverse
5 impact on providers, practitioners, and plans that
6 may work with the Organization.

7 “(4) FUNDING.—The Secretary shall allocate
8 funds for the strategic advisory committee from the
9 portion of the funding that does not directly fund
10 the contracts with Quality Improvement Organiza-
11 tions, as required under section 1159(b).

12 “(d) TAKING INTO ACCOUNT RECOMMENDATIONS
13 FROM STAKEHOLDERS IN STATEMENTS OF WORK.—Each
14 statement of work under this part for a contract period
15 beginning on or after August 1, 2009, shall include a task
16 for the contracting Quality Improvement Organization to
17 convene stakeholders to identify high priority quality prob-
18 lems for work in the next contract period that are relevant
19 to Medicare beneficiaries in the State. Each such organi-
20 zation shall propose, as part of such statement, one or
21 more projects to the Secretary taking into consideration
22 the recommendations of such stakeholders, along with sug-
23 gested performance measures to evaluate progress on such
24 item.

1 “(e) ALLOCATION OF RESOURCES TO PRIORITY
 2 AREAS.—The Secretary shall allocate at least 20 percent
 3 of the funding that directly funds contracts with Quality
 4 Improvement Organizations under section 1159(b) to pro-
 5 mote improvement in one or more locally defined priority
 6 areas identified under subsection (d).

7 “(f) QUALITY COORDINATION.—Quality Improve-
 8 ment Organizations holding contracts under this part shall
 9 be an integral part of Federal performance improvement
 10 initiatives and each organization’s activities shall be co-
 11 ordinated with initiatives developed by the Secretary and
 12 other Federal agencies.

13 “(g) FUNDING.—The Secretary shall increase con-
 14 tract funding for any significant new work required as a
 15 result of coordinating the activities of contractors with ini-
 16 tiatives developed by the Secretary and other Federal
 17 agencies.”.

18 **SEC. 4. USE OF EVALUATION AND COMPETITION.**

19 Section 1153 of the Social Security Act (42 U.S.C.
 20 1320c–2) is amended—

21 (1) by amending paragraph (3) of subsection
 22 (c) to read as follows:

23 “(3) contract terms are consistent with sub-
 24 section (j);”;

1 (2) in subsection (c)(1), by inserting “, at the
2 sole discretion of the organization,” after “or may
3 subcontract”;

4 (3) in subsection (e), by striking “(1) Except as
5 provided” and all that follows through “(2)”;

6 (4) by adding at the end the following new sub-
7 section:

8 “(j)(1) Subject to the succeeding provisions of this
9 subsection, each contract with an organization under this
10 section shall be for an initial term of five years, beginning
11 and ending on a common date for all contractors as re-
12 quired under this subsection and shall be renewable for
13 5-year terms thereafter.

14 “(2) If an incumbent organization achieves excellent
15 performance as described in paragraph (3), then the Sec-
16 retary may renew the contract with that organization
17 without full and open competition, but in no case may an
18 organization be permitted to hold a contract for more than
19 10 years without being subject to full and open competi-
20 tion.

21 “(3) Before publishing a request for proposal for a
22 contract period, the Secretary shall, in consultation with
23 the strategic advisory committee appointed under section
24 1164(c)(1), establish measurable goals for each task to be
25 included in such proposal. The contract shall include per-

1 formance thresholds by which an organization holding a
2 contract under this section may demonstrate excellent per-
3 formance. The Secretary may not establish such perform-
4 ance thresholds in such a way as to predetermine or limit
5 either the number or percentage of organizations which
6 may demonstrate excellent performance.

7 “(4) The Secretary shall publish the request for pro-
8 posals no later than four months prior to the beginning
9 of such contract period.

10 “(5) The Secretary shall ensure that measures to be
11 used in evaluating the performance of organizations hold-
12 ing a contract under this section have been demonstrated
13 to be valid, reliable, and feasible for use under the terms
14 and circumstances of the contract.

15 “(6) In the case of an open competition for a contract
16 under this section, if the incumbent organization bidding
17 for the contract in the State in which it holds the contract
18 demonstrates excellent performance in fulfilling the terms
19 of such contract during the previous contract period, the
20 Secretary shall award such organization a bonus equiva-
21 lent to ten percent of the total possible score for the pro-
22 posal.

23 “(7) The Secretary may not reduce the amount of
24 a contract award below the amount proposed by the bidder
25 prevailing in a competitive bidding process.

1 “(8) The Secretary shall design the process for per-
2 formance evaluation of contracts under this section—

3 “(A) to avoid interfering with the work of con-
4 tractors with plans, providers, and practitioners;

5 “(B) to hold harmless and not penalize contrac-
6 tors when performance is impaired or delayed by
7 failures of the Secretary, personnel of the Depart-
8 ment of Health and Human Services, or contractors
9 of the Secretary, to provide timely deliverables by
10 other entities;

11 “(C) to use a continuous measurement strategy
12 with provision for frequent performance updates for
13 evaluating interim progress; and

14 “(D) to require that evaluation metrics be mon-
15 itored and permit their adjustment based on experi-
16 ence or evolving science over the course of a contract
17 cycle.”.

18 **SEC. 5. QUALITY IMPROVEMENT FUNDING.**

19 Section 1159 of the Social Security Act (42 U.S.C.
20 1320c–8) is amended—

21 (1) by inserting “(a)” before “Expenses in-
22 curred”; and

23 (2) by adding at the end the following new sub-
24 section:

1 “(b)(1) The aggregate annual funding for contracts
2 under this part that begin after August 1, 2009, shall not
3 be less than \$421,666,000. In addition, there are author-
4 ized to be apportioned for contract periods in subsequent
5 years such additional amounts as may be necessary to ade-
6 quately fund any resource needs in excess of the amount
7 provided under the previous sentence.

8 “(2) At least 80 percent of the funding under this
9 part in a contract period shall be expended to directly fund
10 the contracts held by organizations, as required under sec-
11 tion 1153(b).

12 “(3) The Secretary shall determine the resources
13 needs for a contract period, taking into account any new
14 work added by contract modification, during the course
15 of the contract period or added from one contract cycle
16 to the next cycle. New work includes—

17 “(A) additional core contract tasks, require-
18 ments, deliverables, and performance thresholds;

19 “(B) technical assistance for additional pro-
20 viders, practitioners, and health plans and additional
21 provider settings;

22 “(C) increased outreach and communications to
23 Medicare beneficiaries, providers, practitioners, and
24 plans; and

25 “(D) increased volume of medical reviews.

1 “(4) With respect to the apportionment of funds
2 under this part for a contract period—

3 “(A) the Secretary shall submit a proposed ap-
4 portionment to the Director of the Office of Manage-
5 ment and Budget no later than 1 year before the
6 first date of the contract period;

7 “(B) such Director shall approve an proposed
8 apportionment no later than 9 months before the
9 first date of such contract period;

10 “(C) for tasks the Secretary proposes to con-
11 tinue from the previous contract period, if the ap-
12 portionment is not authorized by the deadline speci-
13 fied in subparagraph (B), funding shall continue for
14 the next contract period at a level no less than the
15 level for the previous contract period, increased by
16 the percentage increase in the consumer price index
17 for all urban consumers during the preceding 12-
18 month period.

19 “(5) Organizations with a contract under this part
20 may enter into contracts with public or private entities in-
21 cluding providers, practitioners, and payers other than the
22 Secretary, to provide quality improvement or other serv-
23 ices if there are arrangements made to avoid or mitigate
24 potential conflicts of interest.

1 “(6) Such organizations shall be permitted discretion
2 to allocate contract funds as needed to accomplish the
3 tasks to be performed for a contract awarded under this
4 title.

5 “(7) Organizations with a contract under this part
6 may utilize funding allocated to such contracts to pay for
7 food costs directly related to fulfilling contract require-
8 ments.”.

9 **SEC. 6. QUALIFICATIONS FOR QIOS.**

10 (a) IN GENERAL.—Subsection (b) of section 1153 of
11 the Social Security Act (42 U.S.C. 1320c–2) is amended
12 by adding at the end the following new paragraph:

13 “(4)(A) The Secretary shall not enter into or renew
14 a contract under this section with an entity unless the en-
15 tity has demonstrated success in facilitating clinical and
16 administrative system redesign to improve the coordina-
17 tion, effectiveness, and safety of health care, and in facili-
18 tating cooperation among stakeholders in quality improve-
19 ment.

20 “(B) The Secretary shall ensure that the entity com-
21 plies with standards to ensure organizational integrity, in-
22 cluding—

23 “(i) appropriate representation of consumers
24 and other stakeholders in the composition of the
25 governing body;

1 “(ii) market-based compensation of board mem-
 2 bers and executives;
 3 “(iii) avoidance and mitigation of board mem-
 4 ber conflict of interest; and
 5 “(iv) safeguards to ensure appropriate travel
 6 expenses.

7 To the extent practicable, the Secretary shall utilize stand-
 8 ards developed in the private sector for purposes of car-
 9 rying out this subparagraph and shall conduct audits as
 10 necessary to ensure compliance with such standards.”.

11 (b) USE OF STATES FOR GEOGRAPHIC AREAS.—Sub-
 12 section (a) of such section is amended to read as follows:

13 “(a) The Secretary shall designate each State as a
 14 geographic area with respect to which contracts under this
 15 part will be made.”.

16 (c) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to contract periods beginning after
 18 the date of the enactment of this Act.

19 **SEC. 7. COORDINATION WITH MEDICAID.**

20 (a) PERMITTING ALTERNATIVE QUALITY IMPROVE-
 21 MENT PROGRAM.—Section 1902(a)(30) of the Social Se-
 22 curity Act (42 U.S.C. 1396a(a)(30)) is amended by strik-
 23 ing “and” at the end of subparagraph (A), by adding
 24 “and” at the end of subparagraph (B), and by adding
 25 at the end the following new subparagraph:

“(C) provide, at the discretion of the State plan, for a quality improvement program in place of the program described in subparagraph (A), in whole or in part, that—

“(i) establishes priorities for achieving significant measurable improvement in the quality of health care services provided to individuals eligible under this title, and reviews such priorities at least every five years for the purpose of making appropriate revisions;

“(ii) provides quality improvement assistance to providers and practitioners consistent with such priorities; and

“(iii) provides for an annual report to the Secretary on quality performance under such plan of providers and practitioners using nationally standardized quality measures;”.

(b) ROLE OF QIOS.—Section 1902(d) of such Act (42 U.S.C. 1396a(d)) is amended—

(1) by inserting “(1)” after “(d)”; and

(2) by adding at the end the following new paragraph:

1 “(2) If a State contracts with a Quality Improvement
 2 Organization having a contract with the Secretary under
 3 part B of title XI for the performance of quality improve-
 4 ment program activities required by subsection (a)(30)(C),
 5 such requirements shall be deemed to be met for those
 6 activities by delegation to such an Organization if the con-
 7 tract provides for the performance of activities not incon-
 8 sistent with part B of title XI and provides for such assur-
 9 ances of satisfactory performance by such an entity or or-
 10 ganization as the Secretary may prescribe.”.

11 (c) FUNDING.—Section 1903(a)(3)(C) of such Act
 12 (42 U.S.C. 1396b(a)(3)(C)) is amended—

13 (1) in clause (i), by striking “1902(d)” and in-
 14 serting “1902(d)(1)”; and

15 (2) by adding at the end the following new
 16 clause:

17 “(iii) 75 percent of the sums expended
 18 with respect to costs incurred during such
 19 quarter (as found necessary by the Sec-
 20 retary for the proper and efficient adminis-
 21 tration of the State plan) as are attrib-
 22 utable to the performance of quality im-
 23 provement program activities under a con-
 24 tract entered into under section 1902(d)(2)

1 by an organization holding a contract
2 under section 1153; and”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to contract periods beginning after
5 the date of the enactment of this Act.

6 **SEC. 8. CONFORMING NAME TO “QUALITY IMPROVEMENT**
7 **ORGANIZATIONS”.**

8 Part C of title XI of the Social Security Act is amend-
9 ed by striking “utilization and quality control peer review”
10 and “peer review” each place either appears before “orga-
11 nization” or “organizations” and inserting “quality im-
12 provement”.

○